

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
VALLEY VIEW SEVENTH DAY  
ADVENTIST CHURCH,

Appellant,

v.

DOUGLAS COUNTY AIR POLLUTION  
CONTROL AUTHORITY,

Respondent.

PCHB No. 81-102

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER

This matter, the appeal of a notice of violation and related civil penalty issued by the Douglas County Air Pollution Control Authority, having come on for hearing on August 30, 1982, in Wenatchee, Washington, and appellant being represented by its counsel, Larry Carlson, and respondent being represented by Judith L. McCauley, Douglas County Prosecutor, with Gayle Rothrock presiding, and having reviewed the Proposed Order of the presiding officer mailed to the parties on the 7th day of October, 1982, and more than twenty days having elapsed from said service; and

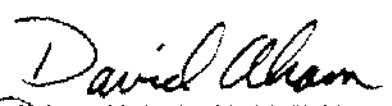
1 The Board having received no exceptions to said Proposed Order  
2 and the Board being fully advised in the premises; NOW THEREFORE,

3 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed  
4 Order containing Findings of Fact, Conclusions of Law and Order  
5 dated the 7th day of October, 1982, and incorporated by reference  
6 herein and attached hereto as Exhibit A, are adopted and hereby  
7 entered as the Board's Final Findings of Fact, Conclusions of Law  
8 and Order herein.

9 DONE this 16<sup>th</sup> day of November, 1982.

10 POLLUTION CONTROL HEARINGS BOARD

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13 GAYLE ROTHROCK, Chairman

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15 DAVID AKANA, Lawyer Member

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17 LARRY FAULK, Member  
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VALLEY VIEW SEVENTH DAY  
ADVENTIST CHURCH,

Appellant,

V.

DOUGLAS COUNTY AIR POLLUTION  
CONTROL AUTHORITY,

Respondent.

PCHB No. 81-102

PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER

This matter, the appeal of a notice of violation and related civil penalty issued by the Douglas County Air Pollution Control Authority, came on for hearing before the Pollution Control Hearings Board; Gayle Rothrock, Chairman, presiding, on August 30, 1982, at Wenatchee, Washington. The proceedings were electronically recorded and the hearing was informal.

Appellant was represented by its counsel, Larry Carlson.  
Respondent agency was represented by Douglas County Prosecutor,

1 Judith L. McCauley. Witnesses were sworn and testified, exhibits were  
2 shown and admitted, and oral argument was heard. From this the Board  
3 makes these

4 FINDINGS OF FACT

5 I

6 Respondent agency has filed with this Board a copy of its  
7 Regulations I, of which we take notice. Respondent also submitted to  
8 the Board at the time of hearing a copy of RCW 70.94.040, of which  
9 judicial notice is taken.

10 II

11 Appellant filed with this Board a copy of the decision in Puget  
12 Sound Air Pollution Control Agency v. Kaiser Aluminum Co. at 25 Wn.  
13 App. 273, 607 P.2d 870, of which official notice is taken.

14 III

15 In early 1981 the Valley View Seventh Day Adventist Church began  
16 site preparation for a new 130' x 150' church building, gravelled  
17 driveways and lawn on its acquired property in a notoriously windy  
18 area of East Wenatchee. Leveling the land and watering it with  
19 sprinklers was part of the preparations.

20 IV

21 The appellants had three sprinklers in operation during weekdays,  
22 and they were moved hourly, if possible, whenever clearing work was  
23 occurring on site. In the spring and summer the sprinklers would  
24 operate on Saturdays and Sundays but only be moved once or twice since  
25 no labor was being performed on those days. Wind and dust posed quite

26 PROPOSED FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
PCHB No. 81-102

1 a problem to the churchbuilders notwithstanding these efforts.

2 v

3 Neighbors and public authorities became attuned to annoying dust  
4 problems in the area. Complaints were made, some violations and two  
5 civil penalties for the church site were registered for May, and  
6 warnings were issued. Some neighbors complained of thick dust  
7 occurring on their property and furnishings. There were also accounts  
8 of the dust being a nuisance to breathing at times.

9 VI

10 On June 26, 1981, a clear Friday with winds registering between 10  
11 and 20 miles per hour in the Wenatchee area, dust from the church site  
12 was swirling up in the evening. While a damaging orchard fire sprung  
13 up that afternoon about three miles from the subject site and clouded  
14 some areas near East Wenatchee, no fire debris was swirling with the  
15 construction site fugitive dust leaving the church property and coming  
16 onto streets and neighboring property late that evening.

17 VII

18 Respondent's air pollution control officer arrived at the site,  
19 noting the few sprinklers had not been moved in awhile and noted,  
20 further, dirt blowing up off the site onto the street and his car. He  
21 checked the wind directional and speed reports, and verifying that he  
22 was seeing fugitive dust from the subject site issued a notice of  
23 violation and \$250 civil penalty for the event. From this appellant  
24 appeals.

VIII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

CONCLUSIONS OF LAW

I

The Legislature of the State of Washington has enacted policies on clean air and allowed those policies to be implemented by air pollution control authorities. RCW 70.94.

II

RCW 70.94.040 specifically makes unlawful the causing, allowing or permitting air pollution in its 1980 amendments; to wit:

Except where specified in a variance permit, as provided in RCW 70.94.181, it shall be unlawful for any person to cause air pollution or permit it to be caused in violation of this chapter, or of any ordinance, resolution, rule or regulation validly promulgated hereunder.

Thus, appellant's motion to dismiss the violation and civil penalty on the basis of lack of knowledge, or scienter, of the dust problem that one evening is without merit and is denied

III

Appellant's failure to commit resources to dust control through better sprinkling in 1981 placed the church in a position to draw violations under Section 5.02(5) of the Regulations of the Douglas County Air Pollution Control Authority, which reads:

1 No person shall allow, cause, let, permit or suffer  
2 the emission of particles of such size and nature as  
3 to be visible individually as particles in sufficient  
4 number to be injurious to human health, plant, or  
5 animal life, or property. This subsection shall  
6 apply only if such particles fall on real property  
7 other than that of the person responsible for the  
8 emission.

9 And such a violation specifically occurred the evening of June 26,  
10 1981.

11 IV

12 The violation committed by appellant was not its first and even  
13 came after a cautionary letter was issued. The civil penalty should  
14 be affirmed in the full amount.

15 V

16 Any Finding of Fact which should be deemed a Conclusion of Law is  
17 hereby adopted as such.

18 From these Conclusions the Board enters this  
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DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1982.

GYLSE ROTHROCK, Chairman

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